

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PRAXAIR, INC.

Plaintiff,

v.

ORDER
07-CV-670A

GENERAL INSULATION COMPANY,
D & N INSULATION COMPANY, a Division
of Petco Insulation Co., Inc., and
SPECIALTY CONSTRUCTION BRANDS, INC.,

Defendants.

GENERAL INSULATION COMPANY,

Cross Claimant,

v.

SPECIALTY CONSTRUCTION BRANDS, INC.,a and
D & N INSULATION COMPANY, A Division
of Petco Insulation Co., Inc.,

Cross Defendants.

D & N INSULATION COMPANY, A Division
of Petco Insulation Co., Inc.,

Cross Claimant,

v.

GENERAL INSULATION COMPANY, and
SPECIALTY CONSTRUCTION BRANDS, INC.,

Cross Defendants.

The above-referenced case was referred to Magistrate Judge Leslie G. Foschio, pursuant to 28 U.S.C. § 636(b)(1)(B). On March 30, 2009, Magistrate Judge Foschio filed a Report and Recommendation, recommending that defendant Specialty Construction Brands, Inc.'s ("SCB") motion to dismiss the Second Amended Complaint be granted as to the Lanham Act claim and, otherwise be denied in part; SCB's motion to dismiss the cross claim of General Insulation be denied and SCB's motion to dismiss the cross claims of D & N Insulation Company be denied.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, defendant Specialty Construction Brands, Inc.'s ("SCB") motion to dismiss the Second Amended Complaint is granted as to the Lanham Act claim and, otherwise is denied in part; SCB's motion to dismiss the cross claim of General Insulation is denied and SCB's motion to dismiss the cross claims of D & N Insulation Company is denied.

The case is referred back to Magistrate Judge Foschio for further proceedings.

SO ORDERED.

s/ Richard J. Arcara
HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: April 29, 2009